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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION

11 **UNITED STATES OF AMERICA, and**  
12 **STATE OF CALIFORNIA, ex rel.**  
13 **DEBORAH CULLEN,**  
14 Plaintiff and Relator,  
15 v.  
16 **ASSOCIATION OF BEHAVIOR**  
17 **CONSULTANTS, WILLIAM J. PALYO,**  
18 **and DOES I-20.**  
19 Defendants.

CASE NO.: CV 15-1188 EDL

**STIPULATION AND REQUEST FOR  
ENLARGEMENT OF TIME TO ELECT  
OR DECLINE TO INTERVENE;  
[PROPOSED] ORDER**

**FILED UNDER SEAL**

20 The State of California and Deborah Cullen, as Relator, through their undersigned counsel,  
21 hereby stipulate and request that the Court enlarge until August 1, 2016 the period during which  
22 the State of California may elect to intervene in the above-captioned *qui tam* action or to notify  
23 the Court that they decline to do so, and during which the complaint and other filings shall remain  
24 under seal.

25 1. This application is being filed *ex parte* pursuant to Civil L.R. 7-10, the Federal FCA,  
26 31 U.S.C. §§ 3729-3733, and the California False Claims Act ("CFCA"), Cal. Gov't Code §§  
27 12650 – 12656, and is not being served on Defendants because the matter currently remains under  
28

1 seal pursuant to the FCA, the CFCA, and order of this Court. This filing is being served on the  
2 Relator.

3 2. This action was filed on March 12, 2015 under the *qui tam* provisions of the Federal  
4 FCA and the CFCA. Among other things, these provisions authorize private parties (known as  
5 relators) to file lawsuits alleging false claims violations on behalf of the United States (31 U.S.C.  
6 §3730(b)) and the State of California (Cal. Gov't Code § 12652(c)).

7 3. In this action, the relator alleges that Defendant Association of Behavior Consultants,  
8 Inc. ("ABC"), which allegedly provides behavior intervention for children with development  
9 disabilities, and Declarant William J. Palyo, ABC's chief executive officer and principal,  
10 defrauded the United States of America and the State of California, by knowingly presenting, or  
11 causing to be presented, to one or more officers or employees of the United States of America and  
12 the State of California, false and fraudulent claims for approval or payment, with an implied  
13 certification of compliance with all eligibility laws, in contravention of the federal FCA and the  
14 CFCA.

15 4. Under 31 U.S.C. § 3730(b)(2) and Government Code § 12652(c)(2), a *qui tam*  
16 complaint shall remain under seal for 60 days and shall not be served on the defendant until the  
17 court so orders. Before a *qui tam* complaint in unsealed and served upon the defendant, the State  
18 of California must elect whether it will intervene in and assume prosecution of the action or,  
19 instead, elect to decline intervention and permit the relator to carry on with the action on behalf of  
20 the government. Cal. Gov't Code § 12652(c)(6)(B). The *qui tam* provisions of the CFCA  
21 expressly contemplate that motions for extensions of the 60-day period will be permitted upon a  
22 showing of "good cause." Cal. Gov't Code § 12652(c)(7)(C).

23 5. Relator completed service of her written disclosure of material evidence on the  
24 United States on or about February 23, 2015, and completed service of her Complaint on or about  
25 March 31, 2015. On that basis, the original seal was set to expire on June 1, 2015.

26 6. On May 8, 2015, the United States filed a Stipulation and Request for Enlargement of  
27 Time to Elect or Decline to Intervene. The Court granted the request and ordered that the case  
28

1 remain under seal until February 1, 2016 in order to permit the United States and the State of  
2 California to complete their investigations.

3 7. The State of California continues to diligently investigate this case but needs more  
4 time to organize and conduct a thorough investigation in order to make an informed intervention  
5 decision. To date it has conducted interviews of the relator and other witnesses with relevant  
6 information. It also is in the process of gathering and reviewing relevant information and  
7 documents. The State of California will seek records from state agencies with potentially relevant  
8 information and may conduct additional witness interviews. Thereafter, the State of California  
9 will determine a plan for further investigation, if appropriate.

10 8. Accordingly, the State of California seeks a six-month extension of the seal and  
11 intervention deadlines in the present case until August 1, 2016. If the extension is granted, the  
12 State of California will continue to diligently investigate Relator's allegations. Counsel for the  
13 State of California has conferred with Relator's counsel regarding this extension and confirmed  
14 that Relator does not object to this request.

15 Dated: January 28, 2016

Respectfully submitted,

16 KAMALA D. HARRIS  
17 Attorney General of California

18  
19 /s/ Suneeta D. Fernandes<sup>1</sup>  
20 SUNEETA D. FERNANDES  
21 Deputy Attorney General  
Attorneys for the State of California

22 Dated: January 28, 2016

BARTLEY LAW OFFICES

23  
24 /s/ Daniel R. Bartley  
25 DANIEL R. BARTLEY  
26 Attorneys for Relator

27 <sup>1</sup> I, Suneeta Daisy Fernandes, hereby attest, in accordance with the Civil L.R. 5(i)(3), the  
28 concurrence in the filing of this document has been obtained from the other signatory listed here.

~~PROPOSED~~ ORDER

IT IS HEREBY ORDERED THAT:

1. The State of California shall have up to and including August 1, 2016, to inform this Court of its decision whether to intervene in this matter.

3. All pleadings and other documents filed in this action shall remain under seal until further order of this Court.

IT IS ORDERED.

Dated: January 29, 2016

  
HON. ELIZABETH D. LAPORTE  
United States Magistrate Judge